IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 45 OF 1999

1. Special Land Acquisition
   Officer, Salaulim Irrigation
   Project, Gogol, Margao,
   Goa.

2. The Executive Engineer,
   Works Division XIV,
   Irrigation Department,
   Gogol, Margao, Goa. ... Appellants.

VERSUS

Shri Jose Milagres Cardozo,
son of Inacinho Cardozo,
residing at House No.287,
Bamado, Chinchinim,
Salcete, Goa. ... Respondent.

Shri H.R. Bharne, Government Advocate for the Appellants.

Shri C.A. Coutinho, Advocate for the Respondent.

CORAM: N.A. BRITTO, J.

DATE OF RESERVING THE JUDGMENT: 15.04.2004
DATE OF PRONOUNCING THE JUDGMENT: 23.04.2004

J U D G M E N T:

The State of Goa through its Special Land Acquisition Officer, Salaulim Irrigation Project and the Executive Engineer, Works Division XIV, Irrigation Department, Margao has filed the present appeal against the Judgment/Award dated 25.1.99 of the learned IInd Addl. District Judge, Margao (Reference Court for short).

2. Briefly stated, by virtue of notification issued under Section 4(1) of the Act dated 10.5.90 and published in Government Gazette dated 7.2.91 the

Government acquired 31,655 sq.m. of land in villages of Chichinim and Deussua of Salcete Taluka for the purpose of making provision of farm development works in the command area of branch canal of S,I,P. for the water courses No.14P at Chinchinim and Deussua villages and in that was included an area of 860 sq.m.of the land of the applicant surveyed under Nos.52/4 and 52/5 of Deussua village and the applicant/respondent by award dated 2.9.95 was awarded compensation at the rate of Rs.4/- per sq.m. in respect of the coconut bund and Rs.4.50 per sq.m. for the paddy field.

3. Dissatisfied with the said award, the said applicant (respondent) sought a reference to be made to the District Court claiming compensation of Rs.250 per sq.m. and the learned IInd Addl. District Judge has now enhanced the said compensation at the rate of Rs.35/- per sq.m. for the bund and Rs.40/- per sq.m. for the remaining paddy field.

4. The applicant had examined his son and attorney, Peter Cardozo (AW.1) and had produced the sale deed of a plot of land dated 12.4.90 (Exh.AW1/B) and in support of the same had examined AW.2 Dr. Dias. Based on the evidence produced on behalf of the said applicant, learned Reference Court took the said

sale deed as a guide to fix the compensation payable to the said applicant and after deducting 40% towards development fixed the price at Rs.90/- per sq.m. and then again deducted 40% therefrom because the acquired property was about 100 metres away from the main road where the plot of the sale deed was situated. A further deduction was also made of 35% because the acquired paddy field required raising or filling before it could be made fit for construction and thus compensation payable to the said applicant was fixed at Rs.45/- per sq.m. for the paddy field and Rs.35/- per sq.m. for the bund of 60 sq.m. (62 sq.m.?).

5. At the time of arguments, learned Government Advocate Shri Bharne has submitted that the said applicant's property was a paddy field and therefore could not be compared with a developed plot of the sale deed dated 12.4.1990. Shri Bharne has further submitted that no construction could have been put up on a bund which generally consists of coconut trees and the best method which could have been adopted by the learned Reference Court was the capitalisation of income method. Shri Bharne has submitted that the applicant did not examine any expert since such an expert would have been the best person to opine whether the paddy field of the applicant was suitable for development. Shri Bharne has submitted that

though some guesswork is permissible in fixing the compensation payable, the same should be adopted only if there is foundation for the same and in the case at hand the learned Reference Court has fixed the compensation based on whims and fancies. Shri Bharne has therefore submitted that in the absence of any material having been produced by the applicant it was difficult to enhance the compensation payable to the applicant. Shri Bharne has placed reliance on the cases reported in **State of Maharashtra and others v. Digamber Bhimashankar Tandale and others** (1996) 2 S.C.C. 583, **Land Acquisition Officer, Hyderabad and others v. Male Pullamma and others** (1996) 8 S.C.C. 247 and **State of Haryana and another v. Joginder Singh** (1997) 3 S.C.C., 628

6. On the other hand, Shri Coutinho, learned Advocate for the applicant/respondent has submitted that the learned Reference Court ought to have given higher compensation for the bund, but he submits that the applicant has not preferred any appeal for having been awarded low compensation for the bund in relation to the paddy field. Shri Coutinho has further submitted that the compensation payable ought to have been fixed for the entire property as a whole. Shri Coutinho has further submitted that in the case at hand there was no need for the said applicant to have

examined any expert and some guesswork was certainly permissible on the basis of which the learned Reference Court has fixed the compensation payable to the applicant.

7. In the case of **State of Maharashtra v. Digamber Bhimashankar Tandale** (supra) the H**on'ble** Supreme Court observed that the determination of compensation on square-foot basis is an illegal principle followed by the courts on feats of imagination since when 12.50 acres of land was sought to be acquired, no reasonable prudent purchaser would come forward to purchase the land on square-foot basis. It would be incredulous to believe such a purchase. On facts, the Hon'ble Supreme Court found that as on the date of notification there was no development in the area and although the agricultural lands were converted for non-agricultural purpose and were situated within the municipal limits, they had no potential value.

8. In the case of **L.A.O., Hyderbad and Ors. v. Male Pullamma and Ors.** (supra) the hon'ble Supreme Court observed that the question of deduction would arise only when the lands are found to have potential value and there is evidence of development in the neighbourhood.

9. In the case of **State of Haryana and another v. Joginder Singh** (supra), the hon'ble Supreme Court again observed that the finding of the District Judge that the acquired land had no potential value of any kind and was pure and simple agricultural land had to be maintained and that the High Court was not justified in taking into account future developments.

10. Before proceeding further to consider the submissions made on behalf of both the parties it is necessary to bear in mind that the responsibility of establishing that the award made by the L.A.O. is inadequate and that the acquired land is capable of fetching higher market value is always on the applicant. In the case of **Special Deputy Collector and another v. Kurra Sambasiva Rao and others (1997)** 6 S.C.C. 41 the aforesaid principle has been reiterated by observing that the burden of proof that the amount awarded by the L.A.O. is not adequate is always on the claimant. The burden is to adduce

relevant and material evidence to establish that the acquired lands are capable of fetching higher market value than the amount awarded by the L.A.O. or that the L.A.O. proceeded on a wrong premise or applied a wrong principle of law and though some guesswork is permissible, mechanical assessment of evidence should be avoided. In the case at hand, the learned Reference Court has proceeded and enhanced the compensation not on materials placed before the Reference Court by the applicant but rather on feats of imagination. The only question to be examined is whether the sale deed dated 12.4.90 could be used as a comparable sales instance ?

11. It is well settled that the Award of the L.A.O. can be looked into to do complete justice between the parties. In the case at hand the applicant's property was a low lying paddy field situated at a distance of about 1/2 km. from the Church and School, as stated by the applicant in his application for reference, which distance was sought to be shrunk by AW.1 by stating that the said distance was about 300 metres. The award shows that the acquired paddy fields were of single crop where there were no irrigation facilities nor any infrastructure activities with bunds located in the middle of the said paddy fields and if that was the situation, I do not know how the learned Reference

Court could believe AW.1 when he stated that all the amenities like water, telephone, electricity, were available in the said acquired property without even a whisper on the part of AW.2 as regards the same. AW.1 had further stated that his paddy field was surrounded on three sides namely north, west and east by the land of the Communidade and on the south by the properties of some other people and at the same time he had stated that there was more than 2 metres wide road which led from his property and met the said Assolna-Margao road. AW.1 Peter did not produce any document in support of his claim of existence of the said road and in case the applicant's paddy fields was surrounded on all sides by paddy fields of the Communidade and some other people, then there could not have been the said road leading from the applicant's paddy field to the said Assolna-Margao road. AW.2 does not appear to be at all conversant with the property of the applicant since otherwise he has not stated anything about the bund which was existing in the applicant's property but unlike AW.1 Peter, AW.2 Dr. Dias has stated that the applicant's property is abutting the road which falsifies the claim of AW.1 Peter that his property was surrounded by the lands of the Communidade and of other people. AW.2 Dr. Dias has spoken of a motorable road, unlike AW.1 Peter, but specifically he has not stated whether

the said motorable road leads to the property of the applicant or where it leads ultimately. There was no whisper in the evidence of AW.1 Peter or for that matter in the evidence of AW.2 Dr. Dias that the land of the plot of the sale deed could be compared with reference to at least some similarities with the paddy field of the applicant. The applicant had not even mentioned what was the area of his paddy field or for that matter what was the length and breadth of the said bund. The evidence of both the said witnesses gives an impression that what was acquired from the applicant is a portion of the applicant's low lying paddy field situated in the interior far away from the said Margao-Betul road may be 1/2 km. or maybe more, while the plot of the sale deed was abutting the said Margao-Betul road and was in level with it. The applicant had not led any evidence as to what was the depth of the paddy field either in relation to the property of the sale deed or for that matter the said Margao-Assolna-Betul road and unless the said depth was known it was improper on the part of the learned Reference Court to have deducted 35% on the assumption that filling was required to be done to make the paddy field suitable for construction. It is an admitted position that the plot purchased by AW.2 was a developed plot while the paddy field of the applicant was a low lying paddy field situated in the interior

from the said Margao-Betul road and the applicant had led no evidence whatsoever to show that there were any similarities between the said low lying paddy field and the said plot of the sale deed. In fact, there was not even a whisper in the evidence of the applicant that the said low lying paddy field could be made suitable for development or construction of houses. Time and again this court as well as the Hon'ble Supreme Court has held that the question of deduction can come only after a comparison is made between the acquired land and the plot of the sale deed. In this context, reference could be made to the case of **Shaji Kuriakose and another v. Indian Oil Corpn. Ltd. and others** (2001) 7 S.C.C. 650 where the said principle is reiterated. The Hon'ble Supreme Court has observed that comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act, but there are certain factors which are required to be fulfilled and only on fulfilment of those factors the compensation can be awarded according to the value of the land reflected in the sales and two of the factors are:- ... (4) that the land covered by the sales must be similar to

the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired.

12. The applicant has led no evidence on the said two aspects. Both the L.A.O. as well as the Reference Court have fixed different value for the land of the paddy field and the bund and it has been rightly conceded by Shri Coutinho that the bund ought to have received higher value than the portion of the paddy field. Shri Coutinho has placed reliance on the case of State of Goa and another v. Smt. Marianinha Vaz and Others reported in 2003 (12) LJ SOFT (URC) 32. I do not think that the said case dealt with the acquisition of low lying single crop paddy field like the case at hand, situated away from the road. Although both the witnesses have stated that the acquired paddy field was situated in a settlement zone, none of them have been able to depose as to at what distance there are houses in the locality. It is true that AW.1 stated there are other residential houses in the adjoining properties, but made no mention about the distance from the said houses and the applicant's acquired paddy field. Otherwise also there is no corroboration to his said evidence.

13. In conclusion, it may be observed that the

applicant had not led any cogent and reliable evidence that the plot of the sale deed could be compared in any aspect with the acquired land and upon the failure of the applicant to produce such evidence, the learned Reference Court ought to have rejected the reference.

14. In view of the above, the appeal deserves to succeed. Consequently the judgment/award of the learned Reference Court dated 25.1.1999 is hereby set aside. The Reference shall stand rejected. Parties to bear their own costs.

N. A. BRITTO, J.

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